

1 **GEORGE L. HASSELBACK, ESQ.**  
2 **O'Connor Berman Dotts & Banes**  
3 **Second Floor, Marianas Business Plaza**  
4 **P.O. Box 501969**  
5 **Saipan, MP 96950-1969**  
6 **Telephone No. (670) 234-5684**  
7 **Facsimile No. (670) 234-5683**

8 *Attorneys for Plaintiff Hye Lin Shin*

9  
10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE NORTHERN MARIANA ISLANDS**

12 **HYE LIN SHIN,**

13 **Plaintiff,**

14 **v.**

15 **YOU RIM CORPORATION,**

16 **Defendant.**

) **CIVIL ACTION NO.: 08-0022**

) **REPLY IN SUPPORT OF MOTION**  
) **FOR SUMMARY JUDGMENT**

) **Judge: Hon. Alex R. Munson**

) **Date: September 11, 2008**

) **Time: 9:00 a.m.**

17 **I. INTRODUCTION.**

18 Plaintiff, by and through counsel, offers this Reply to Defendant's Opposition to  
19 Plaintiff's Motion for Summary Judgment. This Reply is supported by the following argument  
20 and authorities, any and all papers on file with this Court and any and all argument to be  
21 adduced at the hearing of Plaintiff's Motion.

22 Plaintiff's Motion should be granted in full. Plaintiff has standing under CNMI law to  
23 bring this action as the person to which the Check was written.<sup>1</sup> Furthermore, Plaintiff has not  
24 failed to join any indispensable parties to this suit, as Defendant is at no risk for double-  
25 recovery on the check. Furthermore, since there is no requirement of scienter in the CNMI Bad  
26

1 Checks Act, Defendant has not established any genuine issues of material fact and Plaintiff is  
 2 due a judgment as a matter of law. Also, there is no reason for this Court to abstain from  
 3 hearing this Motion. Finally, there is no reason to certify any questions to the CNMI Supreme  
 4 Court for resolution as there are no legitimate legal issues in this case to so certify.  
 5

6  
 7 In short, Defendant has thrown everything into its Opposition with the exception of the  
 8 proverbial kitchen sink. None of this, however, changes the fact that Defendant wrote a bad  
 9 check. This Court should grant summary judgment in favor of Plaintiff.  
 10

## 11 **II. ARGUMENT.**

12  
 13 Plaintiff's Motion should be granted in full.  
 14

### 15 **A. Plaintiff has standing to bring this suit.**

16  
 17 First, Defendant argues that Plaintiff has no standing to bring this lawsuit. Defendant's  
 18 Opposition at 4-6. In doing so, Defendant begins by citing several cases that stand for the  
 19 general proposition that a plaintiff must meet minimum standing requirements before this Court  
 20 may hear any case brought by it.<sup>2</sup> Plaintiff does not disagree that she must meet minimum  
 21 standing requirements, but will insist that she has met the minimum requirements for standing  
 22 because CNMI law vests her with such standing in its Bad Checks Act of 1984, 7 CMC § 2441,  
 23 *et seq.* ("the Bad Checks Act").  
 24  
 25

---

26 <sup>1</sup> For sake of brevity, Plaintiff will continue to refer to the check that is at issue in this case as "the Check," as was  
 27 done in Plaintiff's Memorandum in Support of Summary Judgment.

28 <sup>2</sup> Specifically, Defendant cites *Cantrell v. City of Long Beach*, 241 F.3d 674 (9<sup>th</sup> Cir. 2001) and *Lujan v. Defenders of Wildlife*, 504 U.S. 55 (1992).

1  
2 A plain reading of the Bad Checks Act shows that:

3 Any person, who makes, utters, draws or delivers any check, payment of which is  
4 refused or dishonored due to lack of funds or credit to pay...shall be liable to the  
5 payee [for certain damages].

6 7 CMC § 2442 (a) (emphasis added). By a plain reading of this statute, a “payee” is able to sue  
7 “in small claims court or any other appropriate court” for the specific relief that the statute  
8 provides. *Id.* The Bad Checks Act unambiguously vests the right to sue (standing) in the  
9 “payee” of the bounced check.<sup>3</sup> Who then, is the “payee?” While the Bad Checks Act and  
10 other statutes of the CNMI do not define “payee” specifically, 5 CMC § 3110 does provide  
11 some guidance.<sup>4</sup> It says that an instrument (like the Check) is:

13 ...payable to order” when “by its terms it is payable to order...of any person  
14 therein specified with reasonable certainty...[and that] it may be payable to the  
15 order of ... [a] payee who is not the maker [of the instrument].

16 5 CMC § 3110. The Check was made payable to Plaintiff. *See* Exhibit A to Plaintiff’s Motion  
17 for Summary Judgment. She is the “payee” on the Check.

18  
19 Defendant tries to obfuscate this very straight-forward issue of standing by arguing that  
20 the supplemental definition of “payee” contained in the Bad Checks Act narrows this generally  
21 accepted definition of “payee.” Defendant’s Opposition at 5-6. It does so by arguing that the  
22 language that says “payee ... includes any transferee of the payee,” somehow narrows the scope  
23 of who may bring suit under the Bad Checks Act. *Id.* The Defendant argues that, when read  
24

---

25  
26 <sup>3</sup> The CNMI Supreme Court, when interpreting another issue regarding the Bad Checks Act, specifically stated that  
27 it would “construe statutory language according to its plain-meaning where it is clear and unambiguous.” *Town*  
28 *House Inc. v. Saburo, et al.* 2003 MP 2 at ¶ 11 (internal citations omitted).

1 along with the portions of the Uniform Commercial Code (“U.C.C.”) adopted by the CNMI  
2 Legislature, the Bad Checks Act will *only* permit a transferee of a bad check to sue, if such a  
3 person exists. *Id.* In other words, Defendant argues that since Plaintiff transferred the check to  
4 someone else, the Bad Checks Act divested her of all rights to sue if the check was dishonored  
5 due to lack of sufficient funds. It does not.  
6

7  
8 The CNMI Legislature decided that the term “payee” (as used in the Bad Checks Act),  
9 “*includes* any transferee of the payee.” 7 CMC § 2442 (c) (emphasis added). The operative  
10 word in this portion of the Bad Checks Act is “*includes*.” This very plain language does not  
11 narrow the definition of “payee” as Defendant would suggest, but rather expands it in the case  
12 where, as here, a payee of a check may have indorsed the check over to a third-party. Nothing  
13 in the Bad Checks Act divests the initial payee of a check of standing to sue if he, she or it has  
14 subsequently transferred the check in question over to someone else. The plain language of the  
15 Bad Checks Act *includes* transferees under the umbrella of who has standing to sue, but does  
16 not *un-include* any initial payee if such a transfer has taken place.  
17  
18

19  
20 Defendant’s citation to portions of the U.C.C. that allow for a remedy for dishonored  
21 instruments (including checks), should not persuade this Court that Plaintiff lacks standing. The  
22 applicable U.C.C. remedies for a bounced check are parallel to those offered by the Bad Checks  
23 Act. These two separate statutes, offer two separate avenues for someone who is wronged by a  
24 bounced check to seek redress. Had the CNMI Legislature wanted the Bad Checks Act to be  
25  
26

---

27  
28 <sup>4</sup> Of course, the logical definition of “payee” would be the person intended to be paid by the instrument, but Plaintiff  
would like to remove any ambiguity from this term as Defendant is proffering a very tortured definition of it.

1 bound by, or interpreted strictly according to, the dictates of the U.C.C., it could very well have  
2 said so, but did not. The Bad Checks Act is a stand-alone statute that vests standing without  
3 reference to the U.C.C. The Defendant's conflation of these two statutes for the purposes of  
4 arguing a lack of standing is misplaced and should not influence this Court's decision.  
5

6  
7 Finally, it should be telling that the only case citation that Defendant proffers in support  
8 of its argument that Plaintiff lacks standing is *TRW Title Ins. Co. v. MCD Mortgage Center,*  
9 *Ltd.*, 1992 WL 77733 (N.D. Ill. 1992). Defendant does not bother to explain to this Court why a  
10 sixteen-year-old, unpublished decision from the Northern District of Illinois, that interprets an  
11 Illinois law *that is not even a comparable "bounced checks" statute*, would have any bearing  
12 upon the interpretation of the CNMI's Bad Checks Act. *TRW* interprets an application of  
13 Illinois's version of the U.C.C. *Id.* It does not offer any guidance on who has standing in a  
14 separate "bounced checks" statute...especially the CNMI's. The citation of such an  
15 inapplicable case should make this Court very wary of Defendant's argument that Plaintiff does  
16 not have standing. According to the plain language of the CNMI's Bad Checks Act, she does.  
17 This Motion should be granted in full.  
18  
19

20  
21 **B. Rule 19 should not impede this Court's determination of this Motion.**  
22

23 Next, Defendant argues that summary judgment should not be granted because (it says)  
24 Plaintiff has failed to join indispensable parties according to Federal Rule of Civil Procedure 19  
25 and it will be prejudiced thereby. Defendant's Opposition at 6-9.  
26

27  
28 **1. Defendant has not met its burden of persuasion in its opposition.**

1 Defendant argues that Joy Enterprises is an indispensable party to this suit, that it must  
2 be joined via Rule 19, that its presence would destroy diversity and, therefore, this suit must be  
3 dismissed for lack of jurisdiction. In doing so, Defendant cites *In re: DIET DRUGS*  
4 (*Phentermine, Fenfluramine, Dexfenfluramine*) *Products Liability Litigation*, 2001 WL  
5 34129592 (E.D. Pa. 2001). Defendant says that this case stands for the proposition that:  
6

7 When an absent party has an interest in a check, that party is indispensable to any  
8 dispute concerning the check.

9 Defendant's Opposition at 7. First and foremost, Defendant has failed to meet its burden of  
10 persuasion, by again citing an unreported decision from an foreign jurisdiction that is factually  
11 distinguishable from the case at bar. The *In re: DIET DRUGS* case concerned an attorney who  
12 was claiming that he had an interest in the proceeds of a lawsuit, because he had done  
13 significant work for a client and then been discharged and replaced by another attorney. *In re:*  
14 *DIET DRUGS* at 1. Here, we have an individual who was given a bad check and who is suing  
15 under a statute that vests in her a distinct, and independent, right of action. Defendant does not  
16 tell this Court why this case should be compared to ours, and followed. Nor does Defendant tell  
17 this Court why that decision should impact the application of the CNMI Bad Checks Act. It  
18 should not.  
19  
20  
21  
22

## 23 **2. CNMI law shields Defendant from double payment on the Check.**

24 Defendant's entire argument that there are indispensable parties arises from its  
25 complaint that it might have to pay twice on the same check. Opposition at 7-9. While the  
26 CNMI Bad Checks Act offers an expedited (and Plaintiff would argue parallel) set of remedies  
27 for a person wronged by the passage of a bad check, the CNMI has also adopted portions of the  
28

1 U.C.C. that would act to shield Defendant from any double-payment on the Check. In  
 2 particular, 5 CMC § 3606, entitled “Payment or Satisfaction” states, in full, that:

3       The liability of any party is discharged to the extent of his payment or satisfaction  
 4       to the holder even though it is made with knowledge of a claim of another person  
 5       to the instrument unless prior to such payment or satisfaction the person making  
 6       the claim either supplies indemnity deemed adequate by the party seeking the  
 7       discharge or enjoins payment or satisfaction by order of a court of competent  
 8       jurisdiction in an action in which the adverse claimant and the holder are parties.

9 So then, if Defendant were to be ordered by this Court to pay Plaintiff under the Bad Checks  
 10 Act, it could turn to 5 CMC § 3606 as a complete defense to any further claimants to the Check.  
 11 If payment on an instrument *were not* a defense to a later claim against the same instrument  
 12 (either by the initial payee or a third-party transferee), the entire system of negotiable  
 13 instruments would break down. In that scenario, which Defendant fears, subsequent transferees  
 14 could sue on a single check an infinite number of times...again and again and again. That is  
 15 plainly ludicrous, and not contemplated by CNMI law. Defendant’s fear of multiple liabilities  
 16 is groundless, and should not convince this Court that other parties are indispensable to this  
 17 lawsuit.<sup>5</sup>

18  
 19  
 20 **C. The question of Defendant’s “intent” at the time the Check was written is nothing  
 21 more than a red herring.**

22       Next, Defendant attempts to create genuine issues of material fact by inventing a  
 23 scienter requirement in the CNMI Bad Check Act, and arguing that issues of fact remain  
 24

---

25  
 26 <sup>5</sup> Furthermore, Defendant greatly underestimates the ability of this Court to fashion relief that would protect  
 27 Defendant from double recovery on the check. If this Court found for Plaintiff, and ordered payment be made on  
 28 the Check, it could make a specific finding that such was “Payment or Satisfaction” pursuant to 5 CMC § 3606.  
 This would shield Defendant from any double-payment on the check.

1 regarding Defendant's intent at the time the check was written. Defendant's Opposition at 9-10.  
2 Specifically, Defendant begins the line of argument by saying:

3 ...it appears that the law does not impose strict liability, but applies only in the  
4 circumstance when a person "makes, utters, draws or delivers" a worthless check.  
5 In other words, the check must be worthless at the time the person makes, utters  
6 draws or delivers the check *and the person making, uttering drawing or  
delivering the check knows it is worthless at that time.*

7 Defendant's Opposition at 9 (emphasis added). Defendant is arguing that the Bad Checks Act  
8 requires a plaintiff to prove that the person writing the bad check knew, at the time the check  
9 was written, that the funds would not be available. Where does Defendant find this  
10 requirement? It did not find it in the language of the Bad Checks Act, as it is 100% silent as to  
11 any requirement of intent or knowledge on the part of the party bouncing the check. 7 CMC §  
12 2441, *et seq.* Put simply, Defendant has invented this requirement out of whole cloth to serve  
13 its own ends.  
14

15  
16  
17 Not satisfied with inventing a scienter requirement, Defendant goes even farther and  
18 says, point-blank, that "[t]his construction is consistent with the legislative intent regarding the  
19 statute." In fact, the Defendant says that "[t]he legislative intent indicates that the BCA is  
20 aimed at the **intentional** passing of "bad checks" and is not a strict liability statute" and points  
21 to the Commission Comment to 7 CMC § 2441 as buttressing this contention. Defendant's  
22 Opposition at 10 (emphasis included in original). Given that, this Court should consider the full  
23 language of that Comment, which Defendant conveniently decided to omit from its brief. It  
24 says, in its entirety, that:  
25

26 The Commonwealth Legislature finds it necessary to enact legislation to protect  
27 citizens and local businesses from habitual, repetitious, and irresponsible  
28 individuals who pass bad checks.



1 Commission Comment to 7 CMC § 2441 (repeating the exact language of the CNMI  
2 Legislature's "Findings" section of Public Law 4-35 that passed into law the Bad Checks Act).  
3 Where is the reference to "intentional" passing of bad checks? Where is the support for  
4 Defendant's argument that the Legislature meant "intentional" passing of bad checks? Where  
5 is the word "intentional," the word "intent" or any other reference to an intent requirement?  
6 Simply put...nowhere.  
7

8  
9 The notion that the Bad Checks Act was intended to only cover "intentional" passing of  
10 bad checks is a complete fabrication on the part of Defendant. It has cited absolutely no  
11 authority that stands for this proposition. In its attempt to avoid summary judgment, Defendant  
12 has seen fit to do whatever it can, up to and including the complete creation of non-existent legal  
13 standards under the Bad Checks Act. Put simply, the Bad Checks Act says nothing at all about  
14 intent, and, as such, Defendant's intent cannot create a genuine issue of material fact sufficient  
15 to overcome summary judgment. Defendant does not like the law, so it is trying to change it on  
16 its own initiative. This Motion should be granted in full.  
17  
18

19  
20 **D. This Court should not abstain from deciding this Motion.**  
21

22 Next, Defendant attempts to convince this Court that it should abstain from further  
23 involvement in this case while a related case is pending in the CNMI Superior Court.  
24 Defendant's Opposition at 11. Curiously, while Defendant cites several cases that involve  
25 judicial abstention, including reference to a case where this Court has abstained in the past, it  
26 never really tells anyone *why* abstention is proper in this case. In fact, there is no analysis of the  
27 cited cases or application of these cases to this case at all. Defendant merely says that this Court  
28

1 “should abstain from entertaining this case in light of the pending Superior litigation involving  
2 the underlying assessment,” cites its cases *and does nothing else*. Without any such analysis,  
3 Plaintiff is at a loss in how to respond to this unsupported proposition.<sup>6</sup>  
4

5  
6 While Defendant points this Court to its previous decision in *Natl. Union Fire Ins. Co.*  
7 *of Pittsburgh, Penn. v. Bank of Saipan*, which explicitly recognizes that “abstention is the  
8 exception and not the rule,” (2003 WL 2299731 (D.N.Mar.I.)) it fails utterly to explain why this  
9 is the type of case where this Court should exercise the extraordinary measure of abstaining  
10 from hearing this suit. Defendant’s Opposition at 11. All Defendant says is that “[t]his Court  
11 has previously abstained from entertaining a dispute based on local law when a related case was  
12 pending in the Superior Court.” *Id.* What Defendant does not say is that this is not a case that  
13 disposition thereof would implicate an ongoing “court-approved rehabilitation plan” for a major  
14 local bank and implicate complicated issues of CNMI banking law. *Natl. Union* at 3. In fact,  
15 Defendant does not discuss *any* of the *Younger* abstention factors, much less prove to this Court  
16 that they apply here. Plaintiff would submit that such a halfhearted argument does not  
17 overcome the general presumption against judicial abstention.<sup>7</sup>  
18  
19  
20  
21

---

22  
23 <sup>6</sup> Although Plaintiff will address the cases cited by Defendant, Plaintiff will not attempt to divine the analysis that  
24 Defendant could, or indeed should, have included in this portion of its Opposition. Plaintiff anticipates, however,  
25 that Defendant will present this analysis before this Court at oral argument. Plaintiff would submit that this would  
26 be an unfair and impermissible attempt at “sandbagging” that should not be countenanced by this Court. To allow  
27 such argument to be presented would rob Plaintiff of any meaningful way to respond to such arguments in writing.  
28 Defendant had the chance to present whatever argument it wanted in its Opposition and should be made to live with  
the choices it made.

<sup>7</sup> Likewise Defendant does not explain why this Court’s abstention in *In re Realty Trust Corp.* should bear upon this case when it involved the application of the CNMI Constitution’s Article 12. Complex issues of land ownership are a far cry from the straightforward application of the Bad Checks Act. In so failing to explain, Defendant has not overcome the presumption against abstention and this Court should refrain from doing so.

1 Defendant has not explained why this Court should take the extraordinary step in  
2 deciding to abstain from hearing this case. Therefore, this Court should decide this case.

3  
4  
5 **E. There are no legitimate questions of law to certify to the CNMI Supreme Court.**

6 Finally, much as it did with the question of abstention, Defendant argues that this Court  
7 should exercise its discretion and certify certain issues for determination to the CNMI Supreme  
8 Court. In support of this argument, Defendant string-cites several cases where this Court has  
9 done so in the past, but again, does not offer any comparison or analysis between these cases  
10 and the case at bar.<sup>8</sup> Defendant says that two pressing issues demand determination by the  
11 CNMI Supreme Court and that this Court should not proceed with this case unless and until  
12 these two issues are settled. Opposition at 12. Defendant, however, has made mountains out of  
13 molehills with these issues. In other words, they are not as complicated and unsettled as  
14 Defendant claims, and they do not warrant certification to the CNMI Supreme Court and the  
15 delay in disposition of this case.  
16  
17

18  
19 In particular, the issues certified to the CNMI Supreme Court by this Court in the cases  
20 cited by Defendant involved legitimate issues of local law that were open to various  
21 interpretations, and unsettled by the CNMI Supreme Court. First, in *U.S. v. Borja*, this Court  
22 thought it better that the CNMI Supreme Court answer the question “[i]s the ‘Municipality of  
23 Tinian’ a chartered municipality such that it can sue and be sued?” 2003 MP 8 at ¶ 1. This was  
24 an important and contested question that implicated fundamental issues pertaining to the  
25  
26

---

27 <sup>8</sup> Specifically, Defendant cites *United States v. Borja*, 2003 MP 8, *Bank of Saipan v. Carlsmith Ball Wichman Case*  
28 *& Ichiki*, 1999 MP 20 and *Sonoda v. Cabrera*, 1997 MP 5.

1 construction of the CNMI Constitution and this Court properly decided that the CNMI Supreme  
2 Court should be the body that interprets it. Similarly, in *Bank of Saipan v. Carlsmith Ball*  
3 *Wichman Case & Ichiki*, this Court thought it more proper for the CNMI Supreme Court to  
4 answer the question of whether various claims arising out of a legal malpractice case fell under  
5 the CNMI two-year statute of limitation for injuries to a person or the general six-year statute of  
6 limitations. 1999 MP 20 at ¶ 1. Whether the two, or six-year statute of limitations applied was  
7 a valid and hotly debated argument that, rightfully, should have been decided by the CNMI  
8 Supreme Court. Finally, in *Sonoda v. Cabrera*, another question involving the construction of  
9 the CNMI Constitution was certified, this one involving the proper exercise of the Governor's  
10 executive powers. Each of these cases illustrates a situation where this Court, rightfully,  
11 decided that legitimate questions of legal interpretation should be answered by the CNMI  
12 Supreme Court prior to the disposition of a case before it.

13  
14  
15  
16  
17 Here, however, Defendants "issues" that it claims must be decided by the CNMI  
18 Supreme Court, are not as legitimate as Defendant would have this Court believe. First,  
19 Defendant says that:

20 [i]t is unresolved under Commonwealth law whether a Payee that transfers its  
21 right in a check to a third party retains any right to bring suit under [the Bad  
22 Checks Act] based upon the subsequent dishonor of the check.

23 Opposition at 12. As explained previously, Defendant offers no proof or citation that would  
24 suggest the plain language of the Bad Checks Act would raise such an issue. The language of  
25 the Bad Checks Act that includes transferees of an instrument under the definition of "payee"  
26 does not, in any way, suggest that it excludes an original payee once a transfer is made.  
27  
28

1 Plaintiff will not re-argue this issue here, but rather would direct this Court to the argument in  
2 the “standing” portion of this brief.

3  
4  
5 Next, Defendant again raises the spurious argument that there is a scienter requirement  
6 under the Bad Checks Act. It argues that:

7 [T]he Commonwealth Supreme Court has not decided whether the legislative  
8 intent of the [Bad Checks Act] limits its application and penalties to a person who  
9 intentionally makes, utters, draws or delivers a bad check or whether ... [that  
10 person] ... must know that the check is bad or worthless at the time it is made,  
11 uttered, drawn or delivered.

12 Opposition at 12. The suggestion that this invented scienter requirement, the existence of which  
13 is completely unsupported in either the language of the Bad Checks Act or any recording of the  
14 legislative intent behind it, should be certified to the CNMI Supreme Court for determination  
15 strains credulity to the breaking point. Why not certify the question of whether the Bad Checks  
16 Act only applies to parties with blue eyes? This argument has as much support as Defendants  
17 “unanswered questions” about an intent requirement in the Bad Checks Act. As explained  
18 previously, this requirement does not exist and there is no reason to believe it does. This Court  
19 should not delay disposition of this case because of this spurious argument.

### 20 21 22 **III. CONCLUSION.**

23 The Defendant bounced a check. Under CNMI law, Plaintiff is entitled to the value of  
24 the Check, 12% per annum in interest and her attorney’s fees. There are no genuine issues of  
25 any material fact and Plaintiff is due a judgment as a matter of law. This Court should  
26 immediately enter an Order granting summary judgment to Plaintiff on her claims and ordering  
27 Defendant to pay Plaintiff \$207,474.79 (the amount of the check plus statutory interest),  
28

1 \$250.00 in attorney fees and \$15.00 in additional damages for the fee charged by the Bank of  
2 Guam.

3  
4  
5  
6  
7 Dated: September 8, 2008

Respectfully submitted:

8 O'CONNOR BERMAN DOTTS & BANES  
9 Attorney for Plaintiff

10  
11 By: /s/  
12 GEORGE L. HASSELBACK, ESQ.

13 2542-11-080722-MemSuppMtnSummJdgmt-glh.doc  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28